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Big Oil takes another hit as it seeks reprieve from SCOTUS

By Lesley Clark

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A federal judge is allowing climate liability lawsuits filed by two Maryland communities to proceed before a state bench, finding "substantial public interest" in moving the cases toward resolution.

The ruling is the latest win for local governments taking on the fossil fuel industry for its role in producing planet-warming emissions. And it comes even as the Supreme Court — which starts its new term today — considers wading back into a wider fight over the proper venue for the cases.

U.S. District Judge Stephanie Gallagher found that a state court — not a federal one — should hear the claims brought by the city of Annapolis and Anne Arundel County, which accuse oil and gas companies of lying about the effects of burning fossil fuels.

"This court joins the majority of federal district and circuit courts around the country to conclude that these state law claims for private misconduct belong in state court," Gallagher, a Trump appointee, wrote in the decision released Thursday.

Nearly two dozen lawsuits by cities, counties and states have been filed against the industry, which has sought to transfer the cases to federal court where it believes it will have an easier time convincing judges that the Clean Air Act preempts the cases (*Climatewire*, Sept. 26).

The two Maryland lawsuits, each filed in 2021, seek compensation under the state's Consumer Protection Act for localized climate damages like flooding.

Gallagher noted that Annapolis says it's experienced "the greatest recorded increase in average annual nuisance flooding events of any city in the nation — nearly tenfold," resulting in lost revenue and property damage to local businesses. The city has also had to spend money for pumps and sea walls to mitigate the damage from sea-level rise (*Greenwire*, April 27, 2021).

An attorney for Chevron Corp., which was named in the lawsuits, said the company plans to appeal.

"Chevron believes these cases belong in federal court due to their sweeping implications for national energy policy, national security, foreign policy and other uniquely federal interests," said Theodore Boutrous of Gibson, Dunn and Crutcher LLP. "Climate change is a global phenomenon requiring a coordinated federal policy response, not a patchwork of state lawsuits."

Gallagher also rejected a request from the industry to stay the proceedings, pending a petition to the Supreme Court that asks the high court to find that the cases belong before federal courts.

The Supreme Court has not yet said whether it will take up the petition, *Suncor v. Boulder County* (*Climatewire*, June 9).

But Gallagher wrote that assuming the court takes up the petition, the industry's "track record across the country fails to prove a likelihood of success on the merits sufficient to warrant a stay." She noted that to date, five out of six appellate courts have ruled against federal jurisdiction in similar cases.

"Defendants point to the risk of unnecessary litigation in the event the Supreme Court rules in their favor," she wrote. The city and county, however, argued that a stay would further postpone arguments on the merits of the case and would run the risk that evidence could be lost.

“On the whole, the balance of harms between the parties weighs in favor of proceeding with the case,” Gallagher wrote. “This court does not believe the public interest is served by further prolonging the consideration of the actual merits and believes there is substantial public interest in moving these cases towards disposition.”

The venue debate in the climate liability cases has already reached the Supreme Court once before, with the justices ruling last year that appellate judges must consider a wider range of industry arguments in favor of federal jurisdiction.

The companies’ new losses at the federal level prompted the request for another high court review.

The justices held a conference Wednesday to review petitions. It takes the vote of four justices to agree to hear a case. The Supreme Court rejects most petitions that come its way.

In the Annapolis and Anne Arundel cases, Gallagher noted that all but two of the companies’ arguments were already rejected by the 4th U.S. Circuit Court of Appeals, which ruled in a similar case out of Baltimore in April (*Climatewire*, April 8).

And both new arguments, she said, “similarly fail to provide grounds for federal jurisdiction.”

The companies had argued that the cases should be heard in federal court because the companies’ operations involve federal matters. But Gallagher wrote that the city and county “do not take issue with the simple fact that defendants produced oil and gas, they take issue with the fact that they hid the harms of these products while doing it.”

She said that the companies offered no evidence “that the alleged concealment of the harms of fossil fuel products was for, or related to, their purported federally authorized actions.”

She cited the city and county’s claim that the companies released “misleading research” and said that even if the federal government was a target of the information, it does not “manufacture a federal relationship defendants may now rely upon to access federal courts.”

She called it a “straw man” for the companies to argue that the federal government controlled “significant quantities” of their oil and gas production.

“Simply because a company acts under the direction of a federal officer at some point during its manufacturing and distribution of a product does not bring all of the company’s prior and subsequent product-related actions under the umbrella of federal officer authority,” she wrote.